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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

MM DOCKET NO. 93-93

COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA
and
VALLEY PUBLIC TELEVISION

Bakersfield, California

DATE OF CONFERENCE: June 2, 1993

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JUN 17 1993

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

COMMUNITY TELEVISION OF
SOUTHERN CALIFORNIA

and
VALLEY PUBLIC TELEVISION, INC.

MM Docket NO. 93-93

The above-entitled matter came on for pre-hearing conference pursuant to Notice before Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on June 2, 1993, at 9:00 a.m.

APPEARANCES:

On behalf of Community Public Television
of Southern California:

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GERALD McCARTIN, Esquire
Arent, Fox, Kintner & Plotkin & Kahn
1050 Connecticut Avenue, Suite 600
Washington, D.C. 20036-5339

On behalf of Valley Public Television:

VINCENT J. CURTIS, JR., Esquire
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209

On behalf of Mass Media Bureau:

NORMAL GOLDSTEIN, Esquire
2025 M Street, NW
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| 25 | Conference Began: 9:00 a.m. | Conference Ended: 9:16 a.m. |

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P R O C E E D I N G S

1
2 JUDGE STEINBERG: Okay, we're on the record now. This
3 is a pre-hearing conference in MM Docket No. 93-93, involving
4 mutually-exclusive applications for a construction permit for
5 a new noncommercial educational television station in
6 Bakersfield, California. The case was designated for hearing
7 on April 1st, 1993. By order released April 6th, 1993, the
8 Chief Administrative Law Judge assigned the case to me and set
9 the date of the hearing for August 17th, 1993. A request to
10 extend the hearing date was denied by order FCC 93M-243
11 released May 11th, 1993.

12 Let me first take the appearances for Community
13 Television of Southern California.

14 MR. SCHATTENFIELD: Thomas Shattenfield and Gerald J.
15 McCartin of the law firm of Arent, Fox, Kintner, Plotkin and
16 Kahn.

17 JUDGE STEINBERG: What happened to Mr. Frank?

18 MR. SCHATTENFIELD: Pardon?

19 JUDGE STEINBERG: What happened to Mr. Frank?

1 carefully.

2 JUDGE STEINBERG: Okay. For Valley Public Television,
3 Inc.?

4 MR. CURTIS: Vincent J. Curtis, Jr.

5 JUDGE STEINBERG: For the Chief, Mass Media Bureau?

6 MR. GOLDSTEIN: Norman Goldstein.

7 JUDGE STEINBERG: The first thing I want to go over or
8 just briefly recite is the pleadings that I have that are
9 still pending in this case just to make sure everybody is on
10 the same page. The first thing I have is a motion to enlarge
11 issues filed by Valley on May 3rd and which was supplemented
12 on May 4th. The second thing I have is a motion to enlarge
13 issues filed by Community on May 3rd and it was supplemented
14 on May 4th and on May 18th. In connection with the May 18th
15 supplement, Community also filed on that date a motion to
16 accept the supplement. Let me just ask Mr. Curtis, are you
17 going to oppose the motion to accept?

18 MR. CURTIS: Your Honor, I think as we proceed this
19 morning --

20 JUDGE STEINBERG: It's going to become moot?

21 MR. CURTIS: -- these are all going to become moot.

22 JUDGE STEINBERG: Good. Third --

23 MR. SCHATTENFIELD: You missed one.

24 MR. MCCARTIN: Let the record reflect --

25 JUDGE STEINBERG: No, I didn't.

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1 June 1st date with the understanding that the subject would be
2 discussed at today's conference. That comport with --

3 MR. CURTIS: Yes, Your Honor.

4 JUDGE STEINBERG: Okay.

5 MR. SCHATTENFIELD: Yes, sir.

6 JUDGE STEINBERG: Then we'll, we'll get to this date
7 later. Now, I want to talk about settlement. I know that
8 there have been settlement efforts because I've been informed
9 about certain aspects of those efforts and I just would like
10 to ask what the status is.

11 MR. CURTIS: Your Honor, we are pleased to announce
12 that yesterday afternoon we were able to reach a settlement
13 among the party applicants. Basically, the settlement will
14 result in both party applicants dismissing their applications
15 for Channel 39; that Valley would dismiss its objections to
16 the construction permit, the operation of a translator on
17 Channel 67 at Bakersfield by Community. Neither party during
18 the pendency of the settlement would do any publicity.

19 MR. GOLDSTEIN: What does that mean?

20 MR. CURTIS: Well, we're not going around doing any,
21 any publicity outside of whatever filings we have to do. It
22 was, it was, it was --

23 MR. McCARTIN: With respect to the settlement
24 discussions --

25 MR. CURTIS: Settlement discussions.

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1 MR. McCARTIN: -- would be kept confidential.

2 MR. CURTIS: Neither Valley nor Community would apply
3 for further translators at Bakersfield other than those on
4 which they are operating at the time of the settlement,
5 namely, Channel 65 for Valley and Channel 67 for Community.
6 Valley will not apply for any translators in the future south
7 of the latitude running through the center of Bakersfield.
8 Community will not apply for any translators to the north of
9 the latitude running through Bakersfield. Further, the
10 east/west limitations would be the county lines of Kern
11 County.

12 MR. SCHATTENFIELD: We will not file for any
13 translators north of Bakersfield.

14 JUDGE STEINBERG: You're basically splitting up the
15 area.

16 MR. SCHATTENFIELD: Well, no, not really.

17 MR. CURTIS: Well --

18 JUDGE STEINBERG: You know, you're going to serve this
19 area, they're going to serve that area.

20 MR. CURTIS: Well, except, except Your Honor, east and
21 west outside of the Kern County --

22 JUDGE STEINBERG: Okay.

23 MR. SCHATTENFIELD: Yes. The limitations.

24 MR. CURTIS: -- Kern County --

25 MR. SCHATTENFIELD: Boundaries.

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1 MR. CURTIS: -- boundaries, either party could file for
2 additional translators.
3 JUDGE STEINBERG: Okay.
4 MR. SCHATTENFIELD: Anywhere.
5 JUDGE STEINBERG: East and west.
6 MR. CURTIS: East and -- that's the outside --
7 JUDGE STEINBERG: But north and south --
8 MR. CURTIS: -- boundary --
9 JUDGE STEINBERG: Yeah.
10 MR. CURTIS: -- but up and down --
11 JUDGE STEINBERG: Yeah. One's going to take the north
12 part and one's going to take south --
13 MR. SCHATTENFIELD: Within Kern County, within Kern
14 County.
15 MR. CURTIS: Within --
16 JUDGE STEINBERG: Okay.
17 MR. CURTIS: -- no, no, no.
18 MR. SCHATTENFIELD: No? Sure.
19 MR. CURTIS: No, no. The north/south thing is not
20 within the county. The north/south thing is through the
21 middle of the -- of Bakersfield; the east/west is Kern County.
22 MR. SCHATTENFIELD: Yeah.
23 MR. CURTIS: That's --
24 MR. SCHATTENFIELD: Oh, okay, okay.
25 MR. CURTIS: Okay. All right.

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1 MR. McCARTIN: There's one other gloss on that -- and
2 that is there's a 10-year limitation.

3 MR. CURTIS: Right, I was going to put that on. We
4 will have a 10-year limitation. In other words, the limit
5 would be for 10 years, it wouldn't be forever. And the last
6 thing would be that neither Valley nor Community will either
7 fund, encourage or otherwise be involved directly or
8 indirectly in the efforts of any person or organization with
9 respect to an application for Channel 39 for educational use;
10 nor will they agree to the retransmission of the respective
11 signals by any person or organization receiving authorization
12 for Channel 39 or on any other translator serving the
13 Bakersfield metropolitan area.

14 There is a -- I think there is another point, that if a
15 third party would file for Channel 39 then either one of us
16 could then come back in and refile an application for 39.
17 That I think represents --

18 MR. SCHATTENFIELD: The last thing you said, I --
19 seemed a little -- might be accurate a little different than I
20 remember.

21 MR. CURTIS: Okay.

22 MR. SCHATTENFIELD: But with respect to anybody -- we
23 will not aid anybody directly or indirectly filing for Channel
24 39, but I -- then you said something about entering into a
25 program agreement which might be -- I don't remember hearing

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1 | those -- the retransmission concern, I don't remember hearing
2 | that discussed and that might -- very well might be what it is
3 | but can't remember.

4 | MR. CURTIS: That was, that was in paragraph numbered
5 | nine in Dick's letter to you of May 27th that I thought we
6 | agreed to yesterday.

7 | MR. SCHATTENFIELD: We didn't discuss that I don't
8 | think, but we can work that out. There's no sense in taking
9 | the court's time.

10 | MR. CURTIS: Okay, but that's basically, Your Honor,
11 | what the terms of the agreement would be.

12 | JUDGE STEINBERG: Okay. Now, how soon do you think you
13 | can get signed packages filed?

14 | MR. CURTIS: I would think -- what do you think, a
15 | week, Tom?

16 | JUDGE STEINBERG: Okay. Let me suggest June 11th which
17 | is a week from Friday.

18 | MR. CURTIS: That's fine because -- yeah, I'm sure we
19 | could do that.

20 | JUDGE STEINBERG: Okay.

21 | MR. CURTIS: Do you see any problems -- with that?

22 | MR. SCHATTENFIELD: No.

23 | JUDGE STEINBERG: Okay, because let me just say I'm
24 | very pleased that you've been able to reach a settlement
25 | agreement. I think it -- I think you both know my feelings

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1 about settlement agreements and that I think that settlement
2 is much to be preferred over litigating and especially
3 litigating which has the potential of going on for years and
4 years and years, and the public is definitely served.

5 So let me just -- I'll set a date of Friday, June 11th
6 by which to file a completed settlement package. Let me just
7 say that if a package is not filed by that date then I'm going
8 to order that you commence discovery by that date. In other
9 words, either on June 11th I'll get a settlement package or
10 I'll get notices of deposition and a joint document request,
11 so you do one or the other. Also being the pessimist that I
12 am, I'm going to set a date of June -- you know, assuming --
13 if the settlement package is fine -- if the settlement package
14 is filed on that date, I on my own motion will suspend all the
15 procedural dates. You don't have to -- if you want to file a
16 motion to do that, that's fine, that will serve to remind me,
17 but I usually don't forget those things, you know --

18 MR. SCHATTENFIELD: Don't forget those --

19 MR. CURTIS: Perhaps we can put that as a footnote or
20 something and --

21 JUDGE STEINBERG: Yeah, or as a separate motion, or --
22 but I'll do it. If -- but let's just say a settlement package
23 is not filed and something happens and you do decide to go
24 forward, then on June 11th I'll set -- that's the date by
25 which you have to commence discovery by filing notices of

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1 deposition and a joint document production request. And then
2 I'll set June 18th as the date by which to respond to all the
3 pending pleadings, the three motions to enlarge and the motion
4 -- the -- and the petition for leave to amend and -- yes?

5 MR. SCHATTENFIELD: On that score, I didn't mean to
6 interrupt, but if in fact there is a settlement there is no
7 need then to file oppositions, or how do you clean -- how
8 do you --

9 JUDGE STEINBERG: Okay. I'll get to that.

10 MR. SCHATTENFIELD: Okay.

11 JUDGE STEINBERG: You know, the responses -- let me
12 just say, the responses to the second motion to enlarge, it
13 was hand-served or due on June 11th but it's so inextricably
14 intertwined with the petition for leave to amend that it's --
15 it would be silly -- it wouldn't, it wouldn't be helpful to me
16 at all to have comments on one filed earlier than comments on
17 the other so that's why on my own motion I would extend the
18 date of the second motion to enlarge to the 18th. So on
19 June 18th if there's no settlement everything would be due.

20 Let me address Mr. Shattenfield's question. And this
21 -- let me just say that -- well, I won't say that. But given
22 the structure of the settlement, given the fact that both
23 applications will be dismissed, there is no need for me to
24 resolve any of the matters presented in any of the petitions
25 to enlarge. If the allegations are worthy of pursuit, let me

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1 just say that they've been made before the Bureau and the
2 Bureau -- if the Bureau wants to take them up separately with
3 you guys after your applications have been dismissed, that's
4 their concern, it's not mine. I've got your -- I've got both
5 of your applications in front of me, both which will be --
6 both of which will be dismissed and under those circumstances
7 I don't have to address anything. So, if the settlement
8 package is filed and assuming it's okay and there's no
9 problems with it, in the order disposing of the settlement
10 package I would dismiss all the pending pleadings as moot.

11 Let me also say, getting back to the -- well, I guess I
12 won't address it. You know, the motion to accept the second
13 supplement? What I wanted to do is just grant that. You
14 know, that was the one that -- which supplemented the petition
15 to enlarge with discovery requests.

16 MR. CURTIS: I would prefer that we don't do anything
17 on that.

18 JUDGE STEINBERG: Okay, just hold all that up?

19 MR. CURTIS: Yes.

20 JUDGE STEINBERG: Okay.

21 MR. SCHATTENFIELD: That killed the settlement
22 yesterday.

23 JUDGE STEINBERG: Well, if it's a settlement killer I'm
24 sure I'll get a pleading saying we don't object. Okay. Now I
25 was going to go through my spiel about discovery, but I guess

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1 I won't do that.

2 MR. GOLDSTEIN: I don't remember in the petitions to
3 enlarge, were there any character issues raised on either --
4 by either one?

5 MR. McCARTIN: Valley raised a -- an abuse of process
6 issue against us which has already been ruled on by the Bureau
7 in the Channel 67 translator proceeding. There's a petition
8 for reconsideration pending on that ruling, but that petition
9 will be --

10 MR. CURTIS: Will be dismissed.

11 MR. McCARTIN: -- withdrawn as a result of which the
12 ruling by the Bureau on the other proceeding will become
13 final.

14 MR. GOLDSTEIN: So there's no pending or no alleged
15 character problems with respect to either --

16 MR. CURTIS: No. We raised qualifying questions
17 against each other, but I don't believe except for the abuse
18 of process question there would be no character question
19 pending.

20 MR. GOLDSTEIN: That will be lingering, okay.

21 MR. SCHATTENFIELD: I think that's right.

22 JUDGE STEINBERG: Okay. Anything else we need to
23 discuss?

24 MR. SCHATTENFIELD: No.

25 MR. CURTIS: I don't believe so, Your Honor.

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1 JUDGE STEINBERG: Okay. Then why don't -- I again
2 thank you very much, I appreciate -- I know that this was a
3 hard, a hard settlement to reach and I know that you all
4 worked very hard to reach it and I much appreciate it and I'm
5 sure the people in Bakersfield much appreciate it. Thank you
6 very much. We'll go off the record now.

7 (Whereupon, the pre-hearing conference was adjourned.)

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COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA
Name AND VALLEY PUBLIC TELEVISION, INC.

WASHINGTON, D.C.
Place

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 15, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable